UNITED STATES PATENT AND TRADEMARK OFFICE

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EXAMINER
RAMPURIA, SHARAD K

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _14 November 2008_.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-20 and 41-60_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-20 and 41-60_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a) ☐ All   b) ☐ Some * c) ☐ None of:

      1. ☐ Certified copies of the priority documents have been received.

      2. ☐ Certified copies of the priority documents have been received in Application No. _____.

      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____ .

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims

under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims

was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point

out the inventor and invention dates of each claim that was not commonly owned at the time

a later invention was made in order for the examiner to consider the applicability of 35

U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-20, 41-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Moura; Eduardo J. et al. [US 6104727 A] in view of **FABIANO L J et al.** [WO 0067449 A1].

As per claim 1, **Moura** teaches:

A method of operating a probe device in a broadband wireless system (Abstract), the method

comprising:

storing the channel information in a memory in the probe device; and transferring the channel

information from the memory to a user system. (e.g. storing; Col.6; 32-58)

Moura doesn't teach specifically, receiving a message; processing the message to determine

channel information describing actual use of each of a plurality of channels in the broadband

wireless system by each of a plurality of users, wherein the channel information describing

actual use includes a per-user breakdown of a time spent in each channel. However, FABIANO

advocates in an analogous art, that receiving a message; processing the message to determine

channel information describing actual use of each of a plurality of channels in the broadband

wireless system by each of a plurality of users, wherein the channel information describing

actual use includes a per-user breakdown of a time spent in each channel. (Pg.5; 1-9, Pg.14; 3-

19) Therefore, it would have been obvious to one of ordinary skill in the art at the time of

invention to modify Moura including receiving a message; processing the message to

determine channel information describing actual use of each of a plurality of channels in the

broadband wireless system by each of a plurality of users, wherein the channel information

describing actual use includes a per-user breakdown of a time spent in each channel in order to

provide a method of dynamic network transport resource allocation for communication, by

adjusting initially allocated bandwidth or time slice by geographically distributed controllers to

optimize file transmission on network.

As per claim 2, Moura teaches:

The method of claim 1 wherein the channels are upstream. (e.g. upstream; Col.14; 55-Col.15;

16)

As per claim 3, **Moura** teaches:

The method of claim 1 wherein the channels are downstream. (e.g. downstream; Col.14; 55-

Col.15; 16)

As per claim 4, **Moura** teaches:

The method of claim 1 wherein the message is a credit that allows usage of one of

the channels. (e.g. credit; Col.14; 55-Col.15; 16)

As per claim 5, **Moura** teaches:

The method of claim 1 wherein the message indicates a completion of usage of

one of the channels. (e.g. completion; Col.13; 11-24)

As per claim 6, **Moura** teaches:

The method of claim 1 wherein the probe device is connected to a switch in the

broadband wireless system. (e.g. Col.5; 40-54)

As per claim 7, **Moura** teaches:

The method of claim 1 wherein the probe device is connected to an upstream

manager in the broadband wireless system. (e.g.; Col.13; 11-24)

As per claim 8, **Moura** teaches:

The method of claim 1 wherein the probe device is connected to a downstream

manager in the broadband wireless system. (e.g. downstream; Col.14; 55-Col.15; 16)

As per claim 9, **Moura** teaches:

The method of claim 1 wherein processing the message comprises determining a

state of one of the channels. (e.g. state of channels; Col.14; 55-Col.15; 16)

As per claim 10, **Moura** teaches:

The method of claim 9 wherein the state is polling. (e.g. polling; Col.14; 55-Col.15; 16)

As per claim 11, **Moura** teaches:

The method of claim 9 wherein the state is dedicated. (e.g. dedicated; Col.15; 47-60)

As per claim 12, **Moura** teaches:

The method of claim 9 wherein the state is idle. (e.g. idle; Col.8; 37-43)

As per claim 13, **Moura** teaches:

The method of claim 9 further comprising determining a time in the state. (e.g. time; Col.10; 56-

64)

As per claim 14, **Moura** teaches:

The method of claim 1 wherein processing the message comprises monitoring a

number of bytes transmitted. (e.g. bytes transmitted; Col.2; 13-34)

As per claim 15, **Moura** teaches:

The method of claim 1 wherein processing the message comprises monitoring a

number of messages transmitted during a state of one of the channels. (e.g. transmitted; Col.14;

55-Col.15; 16)

As per claim 16, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a state of one

of the channels. (e.g. state of channels; Col.14; 55-Col.15; 16)

As per claim 17, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a change in a

state of one of the channels. (e.g. state of channels; Col.14; 55-Col.15; 16)

As per claim 18, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a number of

bytes transmitted. (e.g. bytes transmitted; Col.2; 13-34)

As per claim 19, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a number of

messages transmitted. (e.g. transmitted; Col.14; 55-Col.15; 16)

As per claim 20, **Moura** teaches:

The method of claim 1 wherein the channel information comprises a time in a

state of one of the channels. (e.g. state of channels; Col.14; 55-Col.15; 16)

Claims 41-60 are the **device** claims, corresponding to **method** claims 1-20 respectively,

and rejected under the same rational set forth in connection with the rejection of claims 1-20

respectively, above.

Response to Remarks

Applicant's arguments filed on 11/14/2008 have been fully considered but they are not

persuasive.

Relating to Claim 1:

In view of the fact, that **FABIANO** teaches, "In this example, multiple uplinking sites are

transmitting digitized video broadcasts to a centralized location using one of several Frequency

Division Multiplexed (FDM) satellite channels resident on a single satellite transponder. The

channels are available on a full time basis. The control system randomly schedules access to the

satellite channels by multiple sites for short periods of time. Each uplinking earth station is

outfitted with a Multicast Server, which provides the access control at the earth station. The

Multicast Servers would have access to the Internet (or another communications pathway) for communications with the master arbitration server. In addition the uplinking earth station sites would have satellite modem equipment connected to the Multicast Server and satellite earth station transmission equipment. The master arbitration server will schedule access for any individual Multicast Server placed at any uplinking earth station. In this example, the Multicast Server may also implement the functionality of the local arbitration server, particularly the ability to overlay new transfer rate or time slices onto a particular transmission job." (FABIANO, Pg.23; line 22-Pg.24; line 4). Thus, it is evidently, the explanations above is directed to telecommunications systems and methods for a distributed-hierarchical scheduling control system that monitors the network and adapts dynamic rate allocation, time slicing and logical framing to optimize system resources. And also dynamic network transport resource allocation for communication, by adjusting initially allocated bandwidth or time slice by geographically distributed controllers to optimize file transmission on network, that positively, edify by **FABIANO**. Hence, it is believed that **FABIANO** still teaches the claimed limitations.

The above arguments also recites for the other independent claims, consequently the response is the same explanation as set forth above with regard to claim 1.

Because the remaining claims depend directly/indirectly, from one of the independent claims discussed above, as a result the response is the same justification as set forth above.

With the intention of that explanation, it is believed and as enlighten above, the refutation are sustained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS

from the mailing date of this action. In the event a first reply is filed within TWO MONTHS

of the mailing date of this final action and the advisory action is not mailed until after the end

of the THREE-MONTH shortened statutory period, then the shortened statutory period will

expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner

should be directed to Sharad Rampuria whose telephone number is (571) 272-7870. The

examiner can normally be reached on M-F. (8:30-5 EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Dwayne Bost can be reached on (571) 272-7023. The fax phone number for the

organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

like assistance from a USPTO Customer Service Representative or access to the automated

information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000 or

EBC@uspto.gov.

/Sharad Rampuria/
Primary Examiner
Art Unit 2617